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DELPHI
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Comments on the Cross-Media Electronic Reporting and Recordkeeping Proposed Rule (CROMERRRR), 66 Fed. Reg. 46162 (August 31, 2001)

Multi-national Delphi Automotive Systems, with headquarters in Troy, Mich., USA, Paris, Tokyo and São Paulo, Brazil, is a world leader in mobile electronics and transportation components and systems technology. Delphi's three business sectors - Dynamics & Propulsion; Safety, Thermal & Electrical Architecture; and Electronics & Mobile Communication - provide comprehensive product solutions to complex customer needs. Delphi has approximately 195,000 employees and operates 199 wholly owned manufacturing sites, 43 joint ventures, 53 customer centers and sales offices and 32 technical centers in 43 countries. Of the 41 manufacturing sites and 19 non-manufacturing sites located within the United States, most are subject to at least a minimum number of environmental reporting and recordkeeping requirements, while 66% are subject to several major environmental program requirements and reporting. Almost all non-manufacturing and about ½ of the US manufacturing facilities are small to medium sized entities employing less than 1,000 people.

General Overview of Issues

Delphi generally supports the electronic management of data and environmental report submission to government agencies and has worked to support EPA efforts in this regard through our involvement in federal advisory committees, state working groups and coalition activities, such as the Coalition for Effective Environmental Reporting (CEEI). Our company has found that electronic management of data and environmental report submittal has generally improved data quality by reducing transcription errors. We have also found that flexibility for electronic data management is paramount to the success of businesses in today's competitive environment. Delphi must rely on an integration of various operating systems, network services, "foundation" services and shared web services with the company's suppliers, customers and internal business entities to effectively respond to rapidly changing business demands in a cost-effective manner.

In light of these factors, Delphi has several concerns regarding the conditions under which EPA will allow electronic records to satisfy federal environmental regulatory requirements. These concerns are:

- The need for such stringent CROMERRR recordkeeping standards;
- The authority of the Agency to impose such regulations, pursuant to the intent of CAA, CWA, RCRA, CERCLA, EPCRA and TSCA and the impact of CROMERRR on the flexibility offered by those programs for recordkeeping and reporting;
- The conflict between the concept of "voluntary" with state-required electronic submissions;
- The consistency between this proposal with the President's regulatory reinvention goals of reducing the burden of compliance;

- The effect that implementation of CROMERRR standards would have on the Government Performance Environmental Results Act requirement that agencies must be prepared to allow electronic reporting and recordkeeping by 10/21/03;
- The cost-benefit of the rule;
- The impact CROMERRR will have on state environmental regulatory programs;
- How the imposition of CROMERRR requirements would impact compliance with record retention schedules of environmental regulations; and
- The relationship of CROMERRR implementation to evolving software and data interchange technologies.

Need For CROMERRR Recordkeeping Standards

EPA cites the following reasons as the need for CROMERRR:

1) Changes in technology environment;
2) Technology –specific provisions would be complex and unwieldly; and
3) Electronic reporting architecture makes a centralized system viable.

EPA states data improvement as one of the Agency's three goals for electronic data submittal and recordkeeping. Delphi has found that data quality has improved greatly in recent years through recently evolved IT integration, software technology advances, and improved electronic tools for environmental data management. Companies have already been maintaining electronic records and submitting reports electronically for years (the distinction between diskette-based electronic reports and reports submitted directly through an exchange does not significantly change the context of the record) and accommodated new means of submittal as state and federal reporting formats evolve. These reporting formats have greatly improved the ability of internal company and agency staff decision-making, when applied appropriately, consistent with the intent of environmental statutory intent. Provisions for electronic reporting are already incorporated into regulations[1]. The general consensus that electronic records improve compliance is evidenced by the large number of electronic reports currently submitted under the various environmental programs. For example, in cooperation with EPA, Delphi began to internally mandate electronic submittals of TRI data to EPA's EPCRA office years ago. Through this effort, data quality improved by 20-30% by eliminating transcription errors on paper submittals and data entry at the Agency. The improvements demonstrated by electronic submittal are also evidenced by the fact that state agencies are increasingly requiring electronic submittals for environmental reports. The notice fails to address the premise for additional recordkeeping standards, such as those imposed by CROMERRR.

[1] For example, the following EPA Clean Air Act regulations provide examples where electronic recordkeeping is explicitly authorized: 40 CFR § 60.58c(f); 40 CFR § 60.59a(b)(2)(i); 40 CFR § 60.59b(k); 40 CFR § 60.2180; 40 CFR § 60.2745; 40 CFR § 62.14462; 40 CFR § 63.10(b)(1); 40 CFR § 63.103(c)(1); 40 CFR § 63.104(c)(3); 40 CFR § 63.152(g)(1)(vi)(D); 40 CFR § 63.181(a); 40 CFR § 63.192(f)(1); 40 CFR § 63.506(a)(1); 40 CFR §63.642(e) 40 CFR § 63.774(b)(1)(ii); 40 CFR § 63.850(e)(2); 40 CFR §63.998(b)(5)(i)(F)(4); 40 CFR § 63.1065; 40 CFR § 63.1109(c); 40 CFR §63.11.92(d); 40 CFR § 63.1255(g)(1); 40 CFR § 63.1284(b)(1)(iv); 40 CFR §63.1335(a)(1); 40 CFR § 63.1355(a); 40 CFR § 63.1363(g)(1); 40 CFR §63.1386(d)(1)(ii); 40 CFR §163.1409(c)(3); 40 CFR § 63.1416(a)(1); 40 CFR §63.1439(a); 40 CFR § 63.1517(a)(2); 40 CFR § 63.5770(d); 40 CFR §64.9(b)(2); 40 CFR § 65.4(c)(3); 40 CFR § 65.161(e)(1)(vi)(D); 40 CFR §85.1806(e); 40 CFR § 85.1904(d).
An example of explicitly media-neutral recordkeeping provision is the GLP regs: 40 CFR §160.195(i) and 792.195(i).

The preamble indicates an intent to reduce the potential for fraud in electronic reporting and recordkeeping as a basis for additional regulatory requirements for electronic environmental records and reports. While EPA's FY98 Annual Report on Enforcement and Compliance Assurance Accomplishments indicate a significant number of compliance issues related to environmental reporting (25%) and recordkeeping (22%), in FY99 (EPA 300-R-00-005, July 2000), EPA shows only 48 compliance activities (7.9%) resulting from recordkeeping violations out of 605 total. OECA makes no mention of the fact that these are based on falsification of either electronic or paper records. Studies by various entities have demonstrated that the sheer volume of regulations, the "legalese" and compounding aspect of regulatory language, and EPA's failure to codify fundamental elements of legal requirements (such as the definition of "waste" under the Pollution Prevention Act of 1990) far outweigh malicious intent when it comes to violations of environmental regulations, particularly "paperwork" violations. Thus, the benefit to the environment by the imposition of CROMERRR requirements to cannot be justified by the small number of "paperwork" violations that CROMERRR is intended to prevent.

To fully meet information strategies of integrated environmental management, EPA must be able to use information across programs or move to a consolidated reporting protocol. EPA has still not addressed the fundamental issue that data continues to be reported through traditional single-media programs. Due to the lack of integration of these programs, and the varying single-media regulatory interpretations of data that has to be reported, tracking or auditing data beyond the surface of a submitted report would delve into the basic competitive business information systems from which the reported data is generated. Even within large companies themselves, this data often is not disclosed across entities because it has a high likelihood of being misinterpreted, or may disclose confidential business information. Variability in data provided to EPA by regulated entities is more likely due to these factors or the confusion that these factors cause, rather than blatant mis-reporting.

Authorization & Legal Basis for Rule

EPA cites the need to improve the level of corporate and individual responsibility and accountability for electronic reports and records (i.e., to get on par with paper) as an Agency goal. This concern appears to be drawn from the concerns expressed in a DOJ Guidance Document, although EPA does not provide strong independent evidence, nor evidence from the Agency's own experience, supporting the need for anti-fraud provisions. EPA's concerns in this regard have influenced several CROMERRRR provisions, but they are probably most relevant to the "audit trail" requirements in proposed §3.100(a)(6) and (7).

The major environmental acts and their implementing regulations already include anti-fraud provisions. These provisions apply whether the record is paper or electronic. EPA has not provided a sufficient level of legal analysis in the proposal to demonstrate that existing recordkeeping requirements are insufficient to ensure viable electronic reports and records, nor that CROMERRR is indeed necessary to improve environmental performance. EPA has also not clearly demonstrated that CROMERRR would not be, in fact, contradictory to existing provisions, including these provisions in existing programs that attempt to minimize the burden on industry by providing various alternative formats for reporting and recordkeeping.

Information currently used to generate environmental reports comes from a variety of discreet, business confidential electronic and paper systems including facility process throughput inventories, Material Safety Data Sheets, monitoring of water effluent and air emissions, modeling data, material inventories and waste analyses, supplier and service provider systems and customer systems. Many of these systems contain confidential business information. Systems from which data is extracted to develop environmental reports are derived from the global

infrastructure of the company, not from the U.S. EPA does not have the authority to dictate the structure or standards of these global systems or supplier networks.

A 1999 GAO report[2] on environmental information discussed the major issues related to environmental data. Nowhere in this report, is any indication made that the data reported to the agency is lacking in quality. Delphi has found that the quality of data has improved in the past 5-7 years because more records are kept electronically. This makes it much easier to integrate information and cross-check data prior to report submission. However, in order to maintain competitiveness, flexibility is paramount. Delphi needs to be able to quickly evolve and/or integrate new data systems to accommodate new business acquisitions.

In fact, data accuracy within EPA and States' own systems is identified as a persistent concern that is widely recognized both externally and through internal Agency studies. Although EPA has begun to address the need for a system to allow regulated entities to correct erroneous data that reside on EPA systems, a means to carry those corrections through to all Agency systems in which the data resides has not been implemented. Despite the recognized problems with resident data, EPA has indicated that it believes that, in the aggregate, its data are of sufficient quality to support its programmatic and regulatory decisions. If this is the case, then what is the justification for CROMERRR? The true challenges are: the migration of "end-of-pipe" data to the development of meaningful measures of environmental results; identifying critical gaps in environmental data; standardizing data elements and definitions across programs; and developing (again) data standards to enable separately designed "legacy" and developing databases containing key environmental data at EPA to operate compatibly with one another and identifying and correcting inaccuracies within these systems[3][4]. Prior to promulgating new rules, EPA needs to provide a comprehensive analysis of existing data quality problems and propose measures to correct them. Otherwise, imposing more requirements on a "broken" system will not resolve the fundamental problems. In order to justify CROMERRR, a trend toward more recordkeeping violations needs to be clearly demonstrated. Delphi believes, should EPA conduct such an analysis, the Agency would find that data quality has significantly improved since electronic reporting and recordkeeping options have been implemented and that additional requirements would not be value-added.

The Concept of "Voluntary"

Although the new Part 3 Subpart A S3.1 does not require submission of electronic reports or documents of electronic recordkeeping in lieu of paper, in practice the voluntary nature of this would not be an option. Even EPA, promoting CROMERRR as a voluntary incentive when first proposed, has since acknowledged the compulsory nature of the rule. State authorized environmental regulatory programs would have to implement the EPA's electronic data recordkeeping standards in order to retain authorization under federal programs. States that already require electronic submissions would be pulled into a new set of requirements, penalizing them for being so innovative.

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[2] ENVIRONMENTAL INFORMATION: EPA Is Taking Steps to Improve Information Management, but Challenges Remain, USGAO Report to Congressional Requestors, September 1999

[3] EPA/State Stakeholder Forum on Public Information Policies: Summary and Preliminary Action Plan, Chicago, Illinois – Novermber 15-16, 1999, February 18, 2000

[4] Environmental Information Management: Recommendations for the Bush Administration, Appendix 2 – "The Data Quality Challenge", Coalition for Effective Environmental Information, December 2000

States have traditionally been the "proving ground" for innovative approaches to environmental regulation. In states that have strong Electronic Data Interchange (EDI) support, electronic submittals are already required under several state delegated programs. Yet, the affect of these proposed requirements and the cost impacts on these states and affected entities has not fully been addressed. In order to avoid unfunded mandates, EPA needs to fully evaluate the costs on state agencies to implement these requirements, and develop a plan to fully fund this implementation.

Companies that implemented the standards in order to continue to realize the advantages of existing electronic reporting tools would be disadvantaged in states that do not accept electronic reports. Delphi has dozens of recordkeeping systems that "feed" 40 CFR reporting. Each facility develops and maintains their own records for air permitting and monitoring, water permitting and monitoring, material purchases (Delphi has over 40 systems for material purchasing alone), and waste management and integrates that information with a handful of "common" systems, such as MSDS information. Many of the facilities use "off-the-shelf" systems to manage data. Many software packages would have to be modified including Word, Excel, Access, Powerpoint, Notepad, Wordpad, Wonderware (opacity monitor), and SQL (i.e., essentially any computer program that could open up an electronic record and modify it). Getting software companies to comply will be very difficult and take a long time.

In addition to these, Delphi utilizes data from integrated networks of customers, suppliers and service providers. The imposition of CROMERRR on any "piece" of this system would have implications globally and not be voluntary, as proposed. Most or all Delphi locations subject to EPA recordkeeping requirements would be required to comply with the CROMERRR. That in turn would mean that Delphi would be required to adopt CROMERRR standards on all Delphi computers capable of opening up any EPA federal or state electronic records, which includes global systems.

EPA has also not addressed the impact of CROMERRR on these "mixed" systems which, by necessity, need to generate both electronic and paper reports to meet various state and federal environmental requirements. Additionally, EPA has not addressed the impact of the CROMERRR recordkeeping requirements on existing electronic data systems. If a company could not immediately meet the recordkeeping standards, would the company have to "turn off" these systems and convert back to paper? This would be neither cost efficient for companies, nor promote compliance.

Consistency of CROMERRR With Regulatory Streamlining Goals

Electronic reporting and recordkeeping are also promoted as part of the government's move to reduce the burden of compliance and streamline regulatory reporting. These policies are elicited through the March, 1996 Reinventing Environmental Information Report and the Government Paperwork Elimination Act (GPEA) of 1998 (PL 105-277, requiring agencies to be prepared to allow electronic records by October 21, 2003). By imposing additional, significant requirements upon regulated entities that prefer to submit electronic documents and/or keep electronic records, CROMERRR counteracts the intent of these policies and laws.

The National Environmental Policy Act mandates that federal agencies describe the environmental impacts of federal actions. The Federal Register notice does not adequately demonstrate that EPA has thoroughly completed the scoping process, as required by NEPA. Per these requirements, EPA must identify the project's issues (done), concerns (done) and alternative courses of action (not done). EPA has not adequately studied and addressed problems stemming from the proposed recordkeeping standards of CROMERRR, determined the

full scope of the number of state authorized programs that would be affected by these standards, or fully determined the impact of the action on affected large and small businesses.

Several environmental statutes and regulations are specifically designed to allow flexibility to the regulated entities for the development of supporting data and documentation. The imposition of more stringent requirements in these programs must be properly developed, noticed, and implemented in compliance with the Administrative Procedures Act. CROMERRR attempts to circumvent this process.

Cost-Benefit Considerations

Cost and burden reductions for data transfer and maintenance for all parties is one of three goals EPA stated in this proposal. EPA has not conducted any kind of cost-benefit analysis, as required by guidance from the Office of Management and Budget (OMB) or recommended by the Department of Justice (DOJ), on the recordkeeping aspect of the rule.[5] As a result of this, the record for the proposed rule does not begin to reflect the major cost implications of CROMERRRR.

EPA estimates that the cost of implementation of CROMERRR is $48 billion, based on 1.2 million affected facilities ($40,000 per facility avg.). EPA's FY00 Annual Report, indicates that the Agency regulates approximately 8 million entities that range from community drinking water systems to pesticide users to major industrial facilities. EPA has based the cost estimate for CROMERRR on only the 1.7 million of these entities for which compliance data are currently maintained . The remaining 6.5 million entities ranging from small business facilities to individual property owners are very likely to be pulled into future reporting requirements as regulatory expansions such as EPCRA lead rule and CWA MP&M rule are implemented. In light of these expanding requirements, the costs of CROMERRR must be reconsidered more realistically.

As example, Title V has significantly increased the burden under the Clean Air Act and TRI reporting has grown 37% - 47% since that time. EPA is currently considering major expansions to the Clean Water Act regulations (MP&M). Yet, despite the mandates of paperwork reduction, little actual reductions have been realized since that time. In order to quantify the true costs of CROMERRR, EPA needs to more fully evaluate the costs for implementation of CROMERRR and compare to the current and projected future costs of reporting. It is Delphi's estimate that CROMERRR will double these costs. Again, Delphi will use TRI as an example. Being a multi-media report, it requires a high degree of data integration from various systems. Delphi estimates it would incur CROMERRR-related (i.e., additional) costs of close to $1 million per year for TRI reporting alone or over double the EPA estimates for all regulations per affected facility. System maintenance costs would be closer to $30,000 per facility, or about double what EPA estimates per facility.

The cost of maintaining systems to such standards are estimated by EPA at $20 billion annually ($16,666 per facility avg). It appears that the CROMERRR estimates indicate the number of currently reporting facilities, but does not include the other 6-8 million entities that are regulated under federal environmental laws and regulations that may be subject to recent expansions (such

[5] OMB, "Implementation of the Government Paperwork Elimination Act," (date?), http://www.whitehouse.gov/omb/fedreg/gpea2.html (hereafter "OMB Guidance"); DOJ, "Legal Considerations in Designing and Implementing Electronic Processes: a Guide for Federal Agencies," (November 2000), (hereafter "DOJ Guidance").

as the EPCRA lead rule and the CWA MP&M rule)[6]. Even more potentially affected entities are indicated by the Enforcement and Compliance Assurance FY98 Accomplishments Report. That documents 11,366,634 "core" regulated facilities that need to comply with environmental statues and another 6,546,555 "other regulated entities". Thus, the economic cost of this rule, as indicated, falls significantly short of the true cost of the requirements. If all potentially regulated entities are included, the cost of the requirements are 7 times the entire EPA budget, greater than the cost of the Ergonomics rule and all other Clinton-era rules and Y2K compliance costs.

EPA has not adequately considered the effect of CROMERRR on small businesses. Even though Delphi is not considered a small business under EPA's proposal, the Small Business impacts of the proposed recordkeeping and reporting requirements are still significant to our business. As a Tier 1 supplier to automotive and other industries, a large percentage of Delphi's supplier base of over 2,000 are small and minority businesses. Delphi has found that it needs to provide a wide degree of flexibility to suppliers and customers. EPA has not fully evaluated the economic impacts that the imposition of these impacts would have either directly or indirectly on company minority business programs and the tier 2 and 3 supply base. The imposition of CROMERRR recordkeeping requirements on manufacturers and tier 1 suppliers will not only affect the flexibility of US operations to remain competitive, they will also domino back into the supply chain, affecting many small and minority business operations. In the tough economic conditions that these companies are now operating, these costs would be significantly detrimental to businesses that are struggling to stay viable, without any resulting quantifiable environmental benefits.

EPA also did not include a quantified estimate of the environmental benefits of the proposed rule, as required by the OMB guidelines. A clear and concise discussion of environmental benefits, in light of revised cost estimates is needed to comply with OMBs current directive on cost-effective regulatory actions. Consistent with this directive, alternatives need to be fully discussed in a subsequent addendum to this proposal, considering the tremendous economic impact of the CROMERRR proposal.

Impact of CROMERRR on State Programs

The proposed requirements mandate that States implement any electronic reporting in the manner prescribed by EPA, and that States impose EPA's costly requirements for electronic recordkeeping on the regulated community. The proposed rule indicates that States "must" meet EPA's standards for any electronic reporting to meet environmental requirements:

> State, tribes, or local environmental programs that wish to receive electronic reports or documents in satisfaction of requirements under such programs must revise or modify the EPA-approved State, tribal, or local environmental program to ensure that it meets the requirements of this part.
> [Proposed 3 CFR 3.1000 (a)]
>
> Today's proposal contains language that would make compliance with these Part 3 criteria an element of all authorized State, tribal, or local programs that wish to accept electronic reports or allow electronic recordkeeping.
> [66 FR 46171, column 2]
>
> In today's proposed rule, EPA is providing a set of criteria that will have to be met by any system that is used to receive electronic documents submitted to satisfy

[6] Environmental Paperwork: A Baseline for Evaluating EPA's Paperwork Reduction Efforts, Chemical Manufacturers Association, April 3, 1996

> electronic document submission requirements under any EPA-authorized State, tribal, or local environmental program.
> [66 FR 46171, column 3]

If finalized as proposed, on the effective date of the rule, current electronic reporting will not be allowed or recognized by EPA unless and until the State meets EPA's criteria for computer systems to receive electronic reporting and secures EPA approval for revisions or modifications to their program. At public hearings on the proposal, EPA indicated that it might consider some sort of process for seeking exceptions for existing reporting programs. However, no such process is included in the proposed rule, nor is any language about exemption or "grandfathering" of existing programs.

EPA statements that the rule is voluntary are based on the assumption that States have the option to implement a paper-only program (or other program using media not covered by EPA's definition of electronic document receiving system)[7]. Thus, States have a "choice" about whether to receive electronic reports, but they do not have the option to use any electronic receiving system that is outside the bounds of the EPA-prescribed model.

Approximately half of the proposed regulatory language for the new 40 CFR Part 3 addresses electronic reporting and recordkeeping under EPA-approved State, tribal, or local programs. The proposal details specific technical requirements for computer system security, data validity, electronic signatures and certification, transaction records, and system archives.[8] These criteria are specific enough to imply particular types of technologies. They are not flexible enough to accommodate future technological advances. Computer experts who have reviewed the proposed criteria for State receiving systems confirm that very expensive upgrades to existing computer systems and/or purchase of new systems will be required. Some of the upgrades that will be needed are not commercially available at this time.

The proposed 40 CFR 3.3000 mandates that States "that wish to allow the maintenance of electronic records or documents in satisfaction of requirements under such programs must revise or modify the EPA-approved State, tribal, or local environmental program to ensure that it meets the requirements of this part." Proposed 40 CFR 3.3000 (b) mandates that States "must demonstrate that records maintained electronically under this program will satisfy the requirements under Sec. 3.100 of this part." As the regulated community will demonstrate to EPA, the proposed recordkeeping requirements of 40 CFR 3.100 would be extremely onerous and costly.[9] Preliminary estimates are that the total cost to industry could reach several billion dollars. This extremely high cost is due to the very broad definition of an electronic record and to the fact that any environmental record required under Title 40 would have to be kept on computer systems that meet EPA's specific criteria. As States are aware, regulated facilities keep most environmental

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[7] Proposed 40 CFR 3.3. *Electronic document receiving system* means any set of apparatus, procedures, software, records or documentation used to receive documents communicated to it via a telecommunications network.

[8] See proposed 40 CFR Part 3 Subpart D and preamble discussion at 66 FR 46171 – 46177.

[9] The nine proposed recordkeeping criteria include mandates for maintaining electronic documents in a form that may not be altered without detection, for the entirety of the required period of record retention; making electronic records available for on-site inspection and off-site review, for the entirety of the required period of record retention; electronic signature requirements; preventing electronic signatures from being detached, copied, or otherwise compromised; computer-generated, time-stamped audit trails; retaining audit trail documentation for a period at least as long as that required for the electronic records; ensuring that electronic records are searchable and retrievable; archiving electronic records and documents in a form which preserves the context, meta data, and audit trail; ensuring that any transfer to a new system preserves meta data and original functionality; and maintaining computer systems (including hardware and software) for agency inspection.

records electronically. This proposal would require the States to disallow all electronic recordkeeping until the States adopt and EPA approves programs that incorporate EPA's complex criteria for recordkeeping systems.

FDA's 21 CFR Part 11 As a Test Case

The pharmaceutical industry has been struggling for several years to implement the Part 11 electronic recordkeeping requirements at a cost of $100 million per company. Considering the implementation time of such prescriptive requirements, by the time the company goes through all of the implementation requirements for a given system, the software or system for which they are being implemented will already be obsolete. Software manufacturers significantly upgrade or change software an average of every 2-3 years. Delphi has found that records cannot typically be transferred between various "versions" of off-the-shelf software systems that are more than 2 upgrades higher without a significant amount of resources and effort. If the retention period of a regulatory requirement is 6 years or less, the record can be deleted or disposed of before the upgrade issue arises. For records that require longer retention periods, hard copy backup or costly conversions must take place. It is also virtually impossible to move records from newer systems back to previous versions of software, so once a "legacy" system were to be approved under the CROMERRR requirements, the inclusion of new records in the system would not be economically feasible and the "upgraded" version of the system would have to be re-approved. Thus, to maintain the standards, companies would have to implement and maintain multiple systems to maintain records in systems that would have little or no connectivity.

Burden Reduction & Technology Issues

EPA has failed to address the impact of CROMERRR on emerging data management technologies. Business systems are constantly evolving to keep pace with these standards that already provide a framework for data management and dissemination, at significant costs to the companies. Additional standards, imposed by a single regulatory agency, cannot be justified. CROMERRR requires the adoption of prescriptive requirements of "best practices" for electronic records management. "Best practices" are already incorporated into business IT standards. They are also promoted by the existing civil and criminal prosecution authorities of existing environmental regulations. EPA has not considered these standards and incentives as alternatives to CROMERRR and demonstrated the ineffectiveness of these to the degree to justify additional requrements.

One of the purposes of evolving business systems also brings forth a major consideration for CROMERRR. It is broadly acknowledged that the old-style end-of-pipe environmental regulations have met their goals and run their course. With the advancement of environmental initiatives such as Design for the Environment, Substances of Concern, and Life Cycle Analysis and Management now affecting the business and design of products, new challenges are arising in data management. Data used to make business decisions related to environmental impacts comes more and more from confidential business data. The promotion of "open" inspection of computer systems to verify requirements to CROMERRR conflicts with these confidential business considerations. The fact that these systems support global functions has also not been considered by EPA in the proposed rule. The imposition of CROMERRR on data management systems used to generate environmental reports would impact businesses on a global basis. EPA has not considered the impact or legal issues relative to the imposition of these requirements on off-shore entities.

EPA will only begin to accept direct submission once the Agency has provided public notice that an electronic document receiving system is prepared. EPA has not clarified how documents already submitted electronically will be addressed. Clearly, the standards cannot be applied retroactively.

EPA would benefit by "testing" its proposed recordkeeping standards by first imposing them upon Agency systems themselves. Delphi has discovered that much of the "legacy" data at the federal and state level appears to be fraught with error, as previously mentioned, due to transcription errors or post-submittal manipulation for purposes other than intended by the implementing program. Industry is increasingly concerned about the compromising of data validity by the manipulation of publicly reported environmental data once it has been received by the regulatory Agency. Delphi, as well as industry studies (such as the Sector Facility Indexing Project) have found that this erroneous data results from data entry transcription errors, problems with data system migrations within EPA, manipulation of legacy data based on new "interpretations", or the lack of mechanisms to correct data in these situations. Imposing CROMERRR on regulated entities will do nothing to correct these situations. EPA has failed to address this lack of control responsibly, allowing data to be misused by special interest groups in ways that could, ultimately, cause more harm to the environment and communities through policy in response to political pressure, rather than based on sound science. Another issue of concern regarding EPA internal data standards is the fact that EPA data security has been compromised within the past 2 years. Should electronic reporting expand, Agency confidentiality and integrity of data in "public" systems need serious scrutiny to protect business CBI issues and also to prevent data discrepancies such as those described above from increasingly occurring CROMERRR does not address these data quality issues, or address how these will be overcome, either for data already submitted or for that submitted in the future.

CROMERRR will not authorize the conversion of existing paper documents to an electronic format for record-retention purposes. Continuous pressures on companies to reduce structural costs is leading to reduced square footage for office space and support functions. The scanning of documents is being pushed as a means of preserving documentation with minimal space, as well as a means to make the most up-to-date information available via common systems. There is no reason that a scanned document cannot be considered as viable legally as a printed document, as long as it is clear who is responsible for the scanned version and as long as viable business process supports the electronic versions.

Value of Data Systems to the Regulated Community

EPA has done an excellent job of disseminating information to special interest groups representing the "public", and generally to the public itself. If EPA is to succeed with its electronic data reporting and management strategy, it needs to provide more "products" back to the regulated entities themselves. In increasingly competitive markets, EPA should consider a means to provide access to their data systems for reporting entities as a business tool, so companies do not have to maintain parallel systems. This would promote more effective information management and reduce costs for both entities. With an effective data correction process and the implementation of CROMERRR standards within the CDX "master" system, a win-win situation would be established for regulated U.S. entities, the government agencies that use the data, and the interested public.

Electronic Reporting and Recordkeeping Standards

EPA's proposed recordkeeping standards, as proposed, would impose undue burdens on regulated entities and provide no concurrent standards for data users. The environmental

reporting and recordkeeping requirements of the series 40 Code of Federal Regulations, along with Public Law 106-229, Electronic Signatures in Global and National Commerce Act (ESGNCA), provide sufficient requirements for such documentation. Electronic records submitted to EPA should stand, as provided, regardless of subsequent software or regulatory changes, unless updated by the reporting entity pursuant to regulatory procedures or guidance (with the exception of the transportation of hazardous materials, PL 106-229 Sect. 103). The CROMERRR proposal fails to substantiate that the additional standards for electronic recordkeeping (i) serve an important governmental objective; and (ii) are substantially related to the achievement of that objective, as required by the ESGNCA to specify performance standards to assure accuracy, record integrity, and accessibility of records that are required to be retained.

The imposition of the CROMERRR recordkeeping standards, in light of existing 40 CFR record retention periods and their inconsistency with emerging software changes would cause undue burden on companies to run parallel systems.

Delphi has approximately 60 entities potentially regulated by EPA in the United States and 41 that are currently submitting environmental reports on a regular basis. This is only a fraction of the 285 global manufacturing and non-manufacturing sites that the company manages globally. Companies for which the US is no longer the primary center of business cannot afford to have only prescriptive standards, such as those being proposed by EPA, imposed on business systems. US-based companies with extensive global structures need to maintain maximum flexibility to remain competitive in strong global markets. The implementation of ISO 14001, in addition to global commerce standards, provide a sufficient framework to insure the integrity of environmental data systems within the company.

Relationship of CROMERRR to EPA's Current Electronic Reporting Policy

Although the CROMERRR proposal conveys an intent to make electronic reporting and recordkeeping more streamlined than EPA's former electronic reporting proposal (61 FR 46684, Wednesday, September 4, 1996), practically speaking, the same issues remain. Delphi submitted comments on these issues in December, 1996 through the American Automobile Manufacturers Association. A copy of those comments is attached as reference. A response to several of the comments on the original rule were not included in the CROMERRR proposal. Several of these issues appear again in CROMERRR, such as the discrepancy of the assignment of Personal Identification Numbers and existing signatory delegation requirements, "chain of custody" issues related to transmission, record receipt, and error correction, record retention, and unnecessary additional agreements between submitters and recipients (over and above existing regulatory requirements).

Pursuant to the Administrative Procedures Act, more prescriptive actions regarding electronic reporting should not be implemented without addressing issues raised over the course of both of these rulemakings.

Delphi Experience With Electronic Reporting

The EPCRA reporting office, although fairly diligent with record correction, seems to have ongoing difficulties retaining the connection between hard copy signatures and electronic records. A case in point involved CDX and diskette submissions of EPCRA 313 reports in 2001. Signatures were somehow "disconnected" with submissions and had to be refilled.

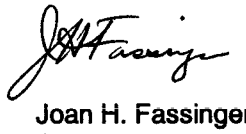
Both EPA and regulated entities have realized benefits from the use of electronic reports. In this notice, EPA has not addressed the improvements in compliance that have *already* resulted from electronic recordkeeping and reporting. If there are issues with the auditability of data, then making electronic reporting more accessible and less cumbersome will continue to promote compliance. To create extensive and unnecessary standards that compete with rapidly changing and diverse business systems is counterproductive to the progress that the Agency has already made to promote improved compliance.

Although EPA has proposed extremely prescriptive standards for electronic recordkeeping for regulated entities, the Agency has not addressed the standards that will apply once the data is received at either a state or federal agency. There is clear evidence that this issue needs to be addressed prior to the final promulgation of CROMERRR. Just as an example, the EPCRA TRI office sends out facility profiles back to TRI report submitters, verifying data that has been received that year. Every year, several Delphi facilities receive reports that indicate error in data or missing signatures. Although these are always due to glitches that occur in the EPCRA office data management system, Delphi facility personnel must expend a significant amount of time researching the alleged discrepancies and resubmitting information to the TRI office. This "correction" effort alone costs Delphi between $20,000-$30,000 per year. If such problems multiply as electronic reporting becomes more widely used or required with increasingly imposing requirements, the resource drain in the regulated community will be tremendous, costing a company such as ours up to $1M per facility. EPA clearly needs to be accountable for such costs and resource drains.

Summary

Delphi has found that EPA's existing electronic reporting policy and activities have improved environmental data quality and, to some degree, have streamlined reporting. Additional streamlining can be accomplished, not through more prescriptive requirements for electronic reports, but on improved integration of traditional "end-of-pipe" regulations, completion of regulatory "definition gaps", and the promotion of flexible alternatives to compliance for diverse business entities. Data quality issues should first be addressed by an improved data correction process for regulated entities and the improvement of standards applicable to records management within EPA and respective state agencies, along with an appropriate level of resources to manage. If EPA would like more examples of where improvements may promote data quality, please contact the writer at 248-267-5669 or joan.h.fassinger@delphiauto.com.

Sincerely,



Joan H. Fassinger
Senior Environmental Project Engineer
Environmental Services Group

Attachment: AAMA Comments on EDI Policy (61 FR 46684), December 20, 1996

Docket EC-2000-007
Delphi Comments
Attachment

December 20, 1996

EPA EDI Implementation Policy
Comment Clerk, Water Docket MC-4101
United States Environmental Protection Agency
401 M Street SW.
Washington D.C. 20460

Re: Agency's General Policy for Accepting Filing of Environmental Reports via Electronic Data Interchange

Dear Sir or Madam:

The American Automobile Manufacturers Association (AAMA) respectfully submits these comments in response to a U.S. Environmental Protection Agency (EPA) notice of policy announcing EPA's general approach for accepting electronic filing of environmental reports via Electronic Data Interchange (EDI) (61 Fed. Reg. 46684, Wednesday, September 4, 1996).

AAMA is the trade association of domestic vehicle manufacturers whose members -- Chrysler Corporation, Ford Motor Company and General Motors Corporation -- generate over 4.5 percent of the nation's gross domestic product, and produce cars and trucks in 384 plants in 36 states nationwide. About 700,000 Americans are directly employed by America's car companies in manufacturing cars and light duty trucks, and the jobs of at least 1.6 million more depend on the industry.

AAMA believes that while EPA is making great strides by moving forward with its approach towards Electronic Data Interchange (EDI), EPA's initiative should not impose additional requirements in order to implement its general policy for accepting filing of environmental reports via EDI. The following are comments specific to the proposed general policy for EDI proposed in the federal register referenced above.

PINs

A good portion of the general policy discusses the use of the Personal Identification Number (PIN) system. AAMA believes that this concept, if implemented properly, could be used to authenticate and identify a report submitted to EPA. However, AAMA believes that EPA should allow the issuance of PINs to not only individuals but also allow for the issuance of a PIN to a specific "Job Position" or "responsible official" and allow for a corporation to delegate that authority, based on existing signatory delagation requirements. We feel it would be logistically difficult and burdensome for

both EPA and the corporation to only delegate PINs to individuals as under the approach outlined by EPA each time a change

occurs the corporation would need to notify EPA. In the rapidly changing global economy, his would cause a burden to both the corporation and to EPA. It would still be the responsibility of the corporation to notify EPA if it believes a PIN has been compromised.

AAMA believes that EPA should retain the current approach for signatory requirements for environmental reporting and apply them to the PIN concept. Currently the delegation procedures vary depending upon the size of the plant and the regulatory program at issue. The signatory requirements under the many programs are fairly uniform, but do have some minor variations.[1]

EPA has recognized that allowing only top executive officers to sign all permit applications and reports would be an undue burden for large corporations. Therefore, the federal signatory rules provide that responsible corporate officers may delegate signatory authority to certain individuals. This flexibility is allowed for both permits and reporting requirements under many federal rules allowing for a "responsible corporate officer" or "responsible official".

AAMA would support an approach the utilizes the current signatory requirements with the only change being that an environmental report submitted via EDI, that the PIN would substitute as the signature required. All the signatory requirements would stay intact and EPA would continue to allow the flexibility to corporations to delegate the authority of the PINs to those individual or positions that they see fit as long as the current program specific guidelines are followed and the company assumes the responsibility as to the security of the PIN.

Date of Receipt

AAMA recommends that EPA modify its date of receipt requirement offered in its EDI proposal to utilize the records in the transmission log as sufficient documentation to also serve as the date of receipt. The date of transmission shall serve as the date of receipt as long a the submittee has compiled the appropriate records to serve as the transmission log.

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[1] National Pollution Discharge Elimination System (NPDES of the Clean Water Act (40 CFR 122.22)
National Pretreatment Program of the Clean Water Act (40 CFR 403.12)
Underground Injection Control (UIC) Program of the safe Drinking Water Act (40 CFR 144.32)
Hazardous Waste Management Program of the Resource Conservation and Recovery Act (RCRA) (40 CFR 270.11)
Operating Permits Program of the Clean Air Act (CAA) (40 CFR 70.2)
Final National Pollutant Discharge Elimination System Stormwater Multi-Sector General Permit for Industrial Activities (60 Fed Reg. 51120)

We do agree with the idea to have EPA then send a functional acknowledgment of "receipt" with the exception that this acknowledgment serves no purpose but to notify the submitter that a error free report was received. It is unrealistic for EPA to require a corporation to submit their report weeks in advance of the reporting deadline in order to allow sufficient time to receive a confirmation that a report was received via EDI and that that information was successfully translated and that no syntactical errors occurred in the report. It is also unrealistic to have a corporation have a paper copy of the report ready to submit when the reduction of paperwork is one of the main goals of this exercise as well as reducing the effort necessary to submit the report.

If EPA does not receive a complete report that is error-free it can request a resubmittal of the report via EDI within a specified period. It is unrealistic to put the burden on the submitter to resubmit the report if it doesn't receive a functional acknowledgment "promptly". AAMA does agree that a timeframe should be defined for when a submittee must retransmit any document within "X" days of receiving a retransmission request from EPA, however we also believe that EPA shall be bound by that same timeframe if a document is requested to be transmitted from EPA to the transmitter by the transmitter.

Currently if a report is submitted with a page missing or data fields not completed, the report is still deemed to have been submitted and instead EPA makes a request of the submitter to submit the missing information. We believe that no additional requirements or burdens should be placed on the submitter just because of the submitters efforts to submit a report utilizing EDI.

Inability to Transmit

If circumstances, foreseeable and unforeseeable, occur and prevent a reporting party from conducting EDI, EPA should develop a proposal for notification that allows a company to notify a central location that a problem has occurred and that allows for a brief extension to the reporting date until such time as the circumstances are rectified. This could be accomplished by EPA developing a "form" extension request to be faxed to a specific office within EPA when such an event occurs. It would be unrealistic to implement an EDI policy and not allow for such circumstances. To require that a written report be ready in case of such a circumstance defeats the entire premise of EDI and therefore should be striken from EPA's proposal. A notification system would be appropriate with strict standards of protocol for rectifying the situation.

Record Retention

Under this provision of the policy it seems that EPA is trying to develop another area of certification as to having an individual authorized with the ability to certify the accuracy and completeness of the transmission log. AAMA believes this step to be unnecessary and duplicative and the transmission log should be able to support itself. It

should meet EPA intentions for a submitter to compile and maintain the necessary information sufficient to demonstrate the authenticity, completeness, accuracy and integrity of those transmissions. The authenticity, completeness, accuracy and integrity

of the information contained in the report shall be the responsibility of the designated "responsible official".

CBI

EPA will need to discuss and further clarify the issue of Confidential Business Information (CBI), for while it may be feasible to mark confidential individual pages of text on paper, it will be much more difficult to identify CBI within an electronic submittal. A general policy for identifying CBI in an electronic submittal should be identified and defined within the scope of EPA's general policy.

ANSI ASC X12

ANSI ASC X12 and/or UN/EDIFACT syntax is a must, particularly the provisions for open architecture. Standards used by EPA must be *interchange* standards so that data can be coded in X12 on one platform and application program and transmitted to any other platform. The transmission control standards used must control only the coding format, not the transmission method.

Public Notice

EPA proposes in its draft notice that a subsequent notice will be published in the Federal Register announcing the Agency's intent to accept a specific environmental report electronically. EPA proposes that the notice be program-specific and will reference or incorporate the current notice, and outline the program-specific requirements for electronic filing of the report. AAMA strongly suggests that EPA prepare a duel notice to appear under an EDI heading in the Federal Register along with the program-specific notice. This is important since many of those who have interest in EDI, may not review all sections of the Federal Register and this would provide a central notification area for one to monitor.

Terms and Conditions Agreement

The following comments are specific to the terms and conditions agreement and will use the same format to identify the area being commented on:

2.4 This section should be amended to allow for the same agreements by both the submitter and EPA. If the submitter is to relinquish any rights as to not contesting the validity or enforceability of Signed Documents EPA should also be bound by this agreement.

3. This section should be modified to reflect that a document shall be deemed to have been properly received by EPA on the date that the transmission log defines the document to have been completely submitted, consistent with our comments above.

4. We concur that a functional acknowledgment should be sent by EPA with such notice only serving as a formal notice that the submittal was received with no syntactical errors and will constitute conclusive evidence that EPA has properly received a report and will establish the "Received Date". The remainder of the language should be deleted.

5. Refer to 3 and 4 above.

6. A retransmission request shall serve as the replacement of a functional acknowledgment. If EPA receives a report but that report is transmitted and errors occur in transmission EPA will request retransmission and that submitter would have a specific compliance time period to resubmit the report. EPA will also abide by the compliance time period if a submitter request a transmission from EPA of a document.

7. As stated earlier a system to allow for immediate notification of EPA of a foreseeable or unforeseeable circumstance should be implemented to allow for a brief extension to the submitter.

9.11 Refer to 3 above.

12.1 AAMA would request that a submitter can delegate the authority of a pin to a "responsible official" which could be defined by a specific job description (i.e. Plant Manager) and not just specific individuals. It would be the corporation's responsibility to delegate that authority and plainly define the responsibilities of the job description.

AAMA is please to submit these comment to EPA and would like to reserve the right to submit additional comments on this proposed notice upon further review. In order to facilitate the use of EDI to submit various environmental reports EPA must foster a environment of goodwill and not require additional requirements on a program which will require a transition period for all to achieve a comfort level with the system. Some flexibility will be necessary to implement the program successfully and should benefit all parties involved in the long run. AAMA would appreciate future opportunities to discuss this proposal with EPA to further discuss the concepts contained herein. Please contact me with any questions you may have (614) 265-2256.

Sincerely,

Robert F. Babik
Regulatory Affairs Manager

cc: Mark Greenwood - CEEI